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Supreme Court, U.S.
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No. 04-5286

IN THE

Supreme Court of the United States

MICHAEL DONALD DODD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

A federal prisoner may file a motion to vacate sentence under 28 U.S.C. § 2255 para. 6(3) within one year of "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review."

The Question Presented is:

Does the one-year period of limitation in paragraph 6(3) begin to run on the date that this Court initially recognizes the right asserted, regardless of whether the right has been newly recognized or made retroactively applicable to cases on collateral review, or does it begin to run on the date on that a prisoner can show that all three of its prerequisites have been established; that is, that the right asserted "was initially recognized" by this Court, "has been newly recognized" by this Court, and "made retroactively applicable to cases on collateral review?"

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BRIEF FOR PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit is published. *Dodd v. United States*, 365 F.3d 1273 (11th Cir. 2004). JA 16-33. The final judgment of the United States District Court is unpublished, JA 15, as is the report and recommendation of the United States Magistrate Judge, JA 11-14.

JURISDICTION

The court of appeals entered its judgment on April 16, 2004. Mr. Dodd filed his petition for writ of certiorari on July 14, 2004, and this Court granted the petition on November 29, 2004. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Paragraph 6 of 28 U.S.C. § 2255 provides:

> A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—
>
> (1) the date on which the judgment of conviction becomes final;
>
> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
>
> (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255 para. 6.

STATEMENT

Petitioner Michael Donald Dodd seeks a new trial based upon *Richardson v. United States*, 526 U.S. 813 (1999). *Richardson* fundamentally changed the way juries decide cases involving the key charge that Mr. Dodd was convicted of: engaging in a continuing criminal enterprise. Mr. Dodd's jury did not make the findings that *Richardson* requires. Before a court may adjudicate the merits of Mr. Dodd's *Richardson* claim, however, this Court must resolve whether he timely filed his collateral challenge to his conviction before the one-year period for doing so expired.

The resolution of that question requires the Court to consider closely the language of the statute of limitations enacted by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). Pub. L. 104-132, 110 Stat. 1214 (1996). The AEDPA established a "1-year period of limitation" for federal prisoners to file motions to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. *See* 28 U.S.C. § 2255 para. 6. The one-year period runs from the "latest of" four dates listed in paragraph 6 of section 2255. In the vast majority of cases, the one-year period begins to run from "the date on which the judgment of conviction becomes final." § 2255 para. 6(1).

The three other dates listed in paragraph 6 reflect Congress' decision to allow collateral litigation well after finality in certain exceptional circumstances. This case involves the exception found in paragraph 6(3) of section 2255. It starts the one-year period on "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." § 2255 para. 6(3).

Eleven courts of appeal have considered paragraph 6(3)'s language and reached markedly divergent results.[1] If a court of appeals in the majority had decided Mr. Dodd's case, the one-year period under paragraph 6(3) would not begin to run until April 19, 2002, when the Eleventh Circuit held in *Ross v. United States*, 289 F.3d 677 (11th Cir. 2002), *cert. denied*, 537 U.S. 1113 (2003), that *Richardson* recognized a new right that applies retroactively to cases on collateral review. *See Pryor v. United States*, 278 F.3d 612, 616 (6th Cir. 2002); *Ashley v. United States*, 266 F.3d 671, 674 (7th Cir. 2001);

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[1] The First and Tenth Circuits have noted the circuit split, but declined to take sides. *See Sepulveda v. United States*, 330 F.3d 55, 65 n.5 (1st Cir. 2003); *Haugh v. Booker*, 210 F.3d 1147, 1150 (10th Cir. 2000).

United States v. Valdez, 195 F.3d 544, 548 (9th Cir. 1999); *United States v. Lloyd*, 188 F.3d 184, 187-88 (3d Cir. 1999); *In re Vial*, 115 F.3d 1192, 1197 n.9 (4th Cir. 1997) (*en banc*).

The Eleventh Circuit, however, adopted the minority's interpretation of paragraph 6(3)'s language, and held that the one-year limitation period began to run on June 1, 1999, the date this Court decided *Richardson*. *See* JA 21; *United States v. Lopez*, 248 F.3d 427, 433 (5th Cir. 2001); *Nelson v. United States*, 184 F.3d 953, 954 (8th Cir. 1999); *Triestman v. United States*, 124 F.3d 361, 371 & n.13 (2d Cir. 1997) (dicta). Because Mr. Dodd filed his section 2255 motion more than a year after *Richardson*, the Eleventh Circuit concluded that the motion was time-barred, and declined to address the merits of his *Richardson* claim. JA 21, 29.

A. The Trial, Sentencing, and Direct Appeal Proceedings.

Following a trial in the United States District Court for the Southern District of Florida, a jury acquitted Mr. Dodd of conspiring to distribute cocaine, one of the predicate acts of a continuing criminal enterprise ("CCE"), but nonetheless convicted him of the CCE violation. *See* 21 U.S.C. § 841 & 846. The jury also convicted Mr. Dodd of conspiring to distribute marijuana in violation of 21 U.S.C. § 841(a)(1), and using and possessing a passport obtained by false statement in violation of 18 U.S.C. § 1546(a). The district court imposed a sentence of imprisonment of 360 months, to be followed by five years of supervised release. JA 17. Mr. Dodd's 360-month sentence is driven by the 20-year mandatory minimum term applicable to CCE convictions. *See* 21 U.S.C. § 848 (1995).

Mr. Dodd timely appealed. In a published opinion issued on May 7, 1997, the Eleventh Circuit affirmed Mr. Dodd's conviction. *United States v. Dodd*, 111 F.3d 867 (11th Cir. 1997) (*per curiam*). Mr. Dodd did not petition this Court

for a writ of certiorari, and his conviction became final on August 6, 1997, when the time expired for filing a certiorari petition. *See Clay v. United States*, 537 U.S. 522 (2003).

B. This Court Decides *Richardson v. United States*.

Nearly two years after Mr. Dodd's conviction became final, on June 1, 1999, this Court held that "a jury has to agree unanimously about which specific violations make up the 'continuing series of violations'" of a CCE charge. *Richardson v. United States*, 526 U.S. 813, 815 (1999).

C. The Section 2255 Proceedings in the District Court.

On April 4, 2001, Mr. Dodd filed a *pro se* motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence. JA 7-10. Mr. Dodd argued, *inter alia*, that he was entitled to relief under *Richardson* because the district court failed to instruct his jury that they had to agree unanimously that he was guilty of each of the violations that made up the series of CCE violations. JA 9. The district court referred the motion to a magistrate judge, who ordered Mr. Dodd to file a memorandum explaining why his motion was not time-barred. 4/13/01 Order at 2. The magistrate judge also ordered the Government to show cause why Mr. Dodd's motion should not be granted. 4/21/01 Order.

In its response, the Government conceded that Mr. Dodd's jury "was not instructed to reach a unanimous decision with respect to the individual violations—an instruction that would now be required under *Richardson* but that was not the status of the law at the time of the Movant's trial." Government's Response to Movant's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 at 3. The Government, however, contended that the court did not have to grant relief because, in its view, Mr. Dodd's motion did not comply with the one-year limitation period applicable to section 2255 motions. *Id.* Mr. Dodd replied, *inter alia*, that his motion

was timely under paragraph 6(3) of section 2255. Petitioner's Reply to Government's Response to Movant's Motion to Vacate, Set Aside or Correct Sentence Pursuant to 28 U.S.C. § 2255 and Response to Order to Respond Regarding Limitations Period at 6-11.

On October 18, 2001, the magistrate judge issued a report recommending that the district court dismiss the motion as untimely. JA 11-14. Specifically, the magistrate judge concluded that Mr. Dodd could not rely upon paragraph 6(3) of section 2255 because he filed his motion more than one year after this Court decided *Richardson*. JA 13.

On October 31, 2001, before the time had run for Mr. Dodd to file objections to the magistrate judge's report, the district court summarily adopted the report in full and dismissed the motion. JA 15. On November 14, 2001, Mr. Dodd timely filed a motion to alter or amend the judgment asking the district court to, at the very least, consider his timely-filed objections to the magistrate judge's report. Petitioner's Motion to Alter or Amend Judgment.

On April 19, 2002, while Mr. Dodd's section 2255 proceeding remained pending before the district court, the Eleventh Circuit held that *Richardson* recognized a new right that applies retroactively to cases on collateral review. *Ross v. United States*, 289 F.3d 677 (11th Cir. 2002), *cert. denied*, 537 U.S. 1113 (2003). On July 29, 2002, Mr. Dodd notified the district court of the decision in *Ross*, and argued that his section 2255 motion was timely under paragraph 6(3) because the one-year limitation period did not begin to run until the Eleventh Circuit held in *Ross* that *Richardson* applied retroactively to collateral cases. Petitioner's Motion for Leave to Supplement and Citation to Supplemental Authorities at 12.

On September 10, 2002, the district court denied both Mr. Dodd's motion to alter or amend judgment and his motion for leave to supplement. 9/10/02 Order. The district court's order did not mention *Ross*. *Id.*

D. The Court of Appeals' Decision.

Mr. Dodd timely appealed, arguing that the limitation period did not begin to run until the Eleventh Circuit held in *Ross* that *Richardson* applies retroactively to collateral cases. The Government disagreed, and argued that the limitation period began to run on the date this Court decided *Richardson*. The court of appeals acknowledged a circuit split over the issue, but joining the minority of its sister circuits, adopted the Government's reading of paragraph 6(3), and affirmed the district court. JA 20-21.

The court of appeals based its decision on three determinations, the first two of which were not contested by the parties. First, the court determined that in *Ross*, it held both that *Richardson* "established a newly created right" within the meaning of paragraph 6(3), and "that the new right announced in *Richardson* is retroactively available on collateral review." JA 21, 23. Second, the court determined that unlike the provisions governing second or successive section 2255 motions, which expressly require this Court to make the retroactivity decision, paragraph 6(3) does not "require[] that the retroactivity decision be made by the Supreme Court; rather, any court may do so." JA 23. *Cf.* 28 U.S.C. § 2255 para. 8.

The parties disagreed below, and continue to do so here, over the Eleventh Circuit's third determination. Specifically, the parties' disagreement centers on the court of appeals' holding that paragraph 6(3) begins to run on the date this Court initially recognizes the asserted right. JA 21. The court of appeals reached this conclusion by reading the plain language of the statute to "provide[] that the limitations period begins to run on 'the date on which the right asserted was *initially* recognized by the Supreme Court.'" JA 25 (quoting *Triestman*, 124 F.3d at 371 n. 13). Applying this interpretation of paragraph 6(3) to the facts of Mr. Dodd's case, the court of appeals determined that because Mr. Dodd's motion

was filed more than a year after this Court's decision in *Richardson*, it was time-barred. JA 29.

SUMMARY OF ARGUMENT

Paragraph 6(3) states that the one-year period of limitation shall run from "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." It contains three distinct prerequisites: first, that the right asserted "was initially recognized" by this Court; second, that the right "has been newly recognized" by this Court; and third, that the right has been "made retroactively applicable to cases on collateral review." 28 U.S.C. § 2255 para. 6(3). Moreover, because Congress phrased these prerequisites in the past tense, they refer to events that had to have happened before the limitation period begins to run. Accordingly, the one-year limitation period begins to run when all three of paragraph 6(3)'s prerequisites have been satisfied.

Paragraph 6(3)'s placement and purpose in the AEDPA also compel the conclusion that all three of its prerequisites must be satisfied before the limitation period begins. Although one clear purpose of the AEDPA is respect for the finality of criminal judgments, Congress nonetheless enacted as part of the AEDPA a number of provisions, including paragraph 6(3), to provide prisoners in certain circumstances the opportunity for relief well past the date of finality. Specifically, the AEDPA amended section 2255 to give a federal prisoner the ability to obtain relief on a claim premised on a new decision of this Court that has been held to apply retroactively to collateral cases, even if the claim arose years after finality, and even, in some circumstances, if the prisoner has filed prior motions for relief. *See* § 2255 paras. 6(3) & 8(2).

Congress' decision to afford prisoners the benefit of rights that have been held retroactively applicable is not surprising. A new decision of this Court does not apply retroactively unless it involves important rights. Such decisions include those that interpret criminal statutes in a way that narrows the scope of the statute's application, *see Bousley v. United States*, 523 U.S. 614, 620-21 (1998), prohibit "'a certain category of punishment for a class of defendants because of their status or offense,'" *Graham v. Collins*, 506 U.S. 461, 477 (1993) (quoting *Saffle v. Parks*, 494 U.S. 484, 494 (1990)), or supply "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.* at 478 (quoting *Saffle*, 494 U.S. at 495). This Court must, therefore, consider Congress' decision to allow prisoners to adjudicate the merits of these important rights when interpreting paragraph 6(3).

Congress' decision to allow prisoners to benefit from new rights made retroactively applicable is served by interpreting paragraph 6(3) to begin to run on the date that all three of its requirements have been established. First, this interpretation allows for the realistic possibility of second or successive motions premised on a new rule of constitutional law. Paragraph 6(3) governs the time for filing second or successive motions as well as initial motions, and must be read together with the stringent gateway procedures governing such motions. Specifically, section 2255 allows a second or successive motion premised on a new rule of constitutional law, but only if the prisoner can show that "this Court already had made" that rule retroactive. *See Tyler v. Cain*, 533 U.S. 656 (2001). Starting the one-year period under paragraph 6(3) when all three of its requirements have been established provides prisoners with the ability to obtain relief on such motions. *See id.* at 677 (Breyer, J., dissenting) (noting that opportunity for relief on second or successive motions "will remain open only if the relevant statute of limitations is interpreted to permit its 1-year filing period to run from the

time that this Court has 'made' a new rule retroactive, not from the time it initially recognized that new right").

Second, reading paragraph 6(3) to run from the date all three of its requirements have been established allows for the possibility that the lower courts might incorrectly determine that a right initially recognized by this Court does not apply retroactively to collateral cases. If a court of appeals incorrectly determines that the right does not apply retroactively, the limitation period will not yet have begun to run because all three prerequisites in the statute have not been met. If this Court later determines that the right indeed has retroactive effect, the limitation period will begin to run, and the lower court's mistake will not affect the ability to obtain relief. It therefore advances Congress' intent to give prisoners the benefit of new rights that apply retroactively to collateral cases.

Finally, the majority's interpretation of paragraph 6(3) comports with the purpose of the AEDPA to discourage prisoners from filing frivolous applications for collateral relief. It allows a prisoner the opportunity to make an informed decision about whether to file a section 2255 motion premised upon a new decision of this Court, and the likelihood of any such motion's success, without the concern that by doing so he risks all opportunity to obtain relief under that decision.

Some courts, including the court below, have held that the new limitation period in paragraph 6(3) should always run from the date a right "was initially recognized" by this Court, regardless of whether the right "has been newly recognized" or "made retroactively applicable." This interpretation renders superfluous the twenty words that comprise the second clause of paragraph 6(3), and fails to respect Congress' use of the past tense in defining the statutory requirements.

The minority's interpretation would also unfairly bar prisoners from benefitting from decisions of this Court that have been applied retroactively to collateral cases, even though

Congress clearly intended the contrary result. Starting the one-year limitation period on the date a right is initially recognized would vitiate Congress' decision to allow second or successive motions premised on a new rule of constitutional law that this Court has made retroactive. This is so because the limitation period will have run long before a case can reach this Court in a posture that would allow it to make the retroactivity ruling.

Moreover, adoption of the minority view could result in prisoners in some circuits obtaining relief on the merits, while affording those in other circuits no relief. If a court of appeals determines that a right does not apply retroactively, and certiorari is denied, but this Court later determines that the right *does* have retroactive effect, this Court's retroactivity decision will provide no relief in the circuit that originally reached the wrong conclusion. No prisoner in that circuit will be able to benefit from this Court's retroactivity ruling, because the one-year limitation period will already have run.

Finally, the minority's interpretation of paragraph 6(3) encourages federal prisoners to file potentially frivolous section 2255 motions every time this Court issues a decision, whether or not it states a new right or applies retroactively, for the sole purpose of protecting any possible right to relief they may have under it.

In sum, interpreting paragraph 6(3) to state that the limitation period begins to run when all three of its requirements have been satisfied accords with the plain language of the statute, as well as its placement and purpose in the statutory scheme enacted by the AEDPA. For Mr. Dodd, all three of paragraph 6(3)'s prerequisites were not satisfied until the Eleventh Circuit's decision in *Ross* concluded that *Richardson* initially recognized a new right that applied retroactively to collateral cases. Mr. Dodd's motion was timely, and this Court should reverse the decision of the court of appeals to the contrary.

ARGUMENT

I. PARAGRAPH 6(3) STATES THREE PREREQUISITES THAT MUST HAVE BEEN SATISFIED BEFORE ITS ONE-YEAR LIMITATION PERIOD BEGINS TO RUN.

No explicit time restriction applied to section 2255 motions before the enactment of the AEDPA. The pre-AEDPA version of section 2255 expressly gave prisoners the ability to file a motion "at any time," so long as they filed without prejudicial delay. *See* 28 U.S.C. § 2255 (1994); Rule 9(a), Rules Governing § 2255 Proceedings, 28 U.S.C. foll. § 2255; *Lonchar v. Thomas*, 517 U.S. 314 (1996).

Section 105 of the AEDPA, however, amended section 2255 to establish a "1-year period of limitation" for section 2255 motions. *See* AEDPA § 105, 110 Stat. 1220 (1996) The one-year period runs from the "latest of" four dates listed in paragraph 6 of section 2255. 28 U.S.C. § 2255. The first of these dates states the general rule that applies in the vast majority of cases. The general rule is that the one-year period begins to run from "the date on which the judgment of conviction becomes final." § 2255 para. 6(1).

The three other dates listed in paragraph 6 reflect Congress' decision to allow collateral litigation well after finality in certain exceptional circumstances. Each allows a motion to be filed more than a year after the date of finality by "reset[ting] the limitations period's beginning date, moving it from the time when the conviction became final to the later date on which the particular claim accrued." *Wims v. United States*, 225 F.3d 186, 190 (2d Cir. 2000) (internal citation omitted). Thus, the removal of an unlawful governmental action that prevented the timely filing of a motion, § 2255 para. 6(2), or newly discovered facts, § 2255 para. 6(4), may reset the limitation period's beginning date.

The limitation clock may also be reset under the circumstances found in paragraph 6(3), the exception at issue here. Paragraph 6(3) provides that the one-year period begins to run on "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." § 2255 para. 6(3). This case turns on the meaning of these 34 words.

A. Paragraph 6(3) States Three Prerequisites All Phrased in the Past Tense.

When considering the meaning of a statute, this Court's "task is to construe what Congress has enacted." *Duncan v. Walker*, 533 U.S. 167, 172 (2001). "The preeminent canon of statutory interpretation" requires this Court to "presume that [the] legislature says in a statute what it means and means in a statute what it says there." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, ___, 124 S. Ct. 1587, 1593 (2004) (citing *Connecticut Nat. Bank v. Germaine*, 503 U.S. 249, 253-54 (1992)). So if Congress has enacted an unambiguous statute, then not only does this Court's "inquiry begin[] with the statutory text, [it] ends there as well." *Id.* This Court need not venture beyond the language of paragraph 6(3) of section 2255 to ascertain its meaning.

Paragraph 6(3) states that the limitation period begins to run on the date that the right asserted "was initially recognized" by this Court. § 2255 para. 6(3). But that is not all. Two more prerequisites follow. That is, in addition to "initially recogniz[ing]" the right, this Court must have "newly recognized" the right. *Id.* And a court, but not necessarily this Court,[2] must also have "made" the right "retroactively

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[2] The lower courts to consider the question have uniformly held that this Court need not make the retroactivity decision for purposes of paragraph 6(3); rather, any court may do so. *See* JA 23; *Lopez*, 248 F.3d at

applicable to cases on collateral review." *Id.* Thus, not any right will make the limitation period begin. Instead, the right must have been "initially recognized" by this Court, "ha[ve] been newly recognized" by this Court, "*and made* retroactively applicable to cases on collateral review." *See* § 2255 para. 6(3) (emphasis added).

Paragraph 6(3) not only states three prerequisites; it states these three prerequisites in the past tense. Under paragraph 6(3), the limitation period runs from the date on which the right asserted "*was* initially recognized," "*has been* newly recognized" and "*made* retroactively applicable." § 2255 para. 6(3) (emphasis added). "Congress' use of verb tense is significant in construing statutes." *United States v. Wilson*, 503 U.S. 329, 333 (1992). It must, therefore, be respected. Congress' use of the past tense to describe each of the three prerequisites in paragraph 6(3) mandates that all three prerequisites be satisfied *before* the one-year period starts.

Thus, paragraph 6(3) states three prerequisites in the past tense. By its plain language, it is not until a prisoner can show that all three of its prerequisites have been satisfied that the one-year period of limitation starts to run. This Court need look no further to interpret paragraph 6(3). *BedRoc Ltd.*, 541 U.S. at ___, 124 S. Ct. at 1593.

B. This Court's Precedents, Paragraph 6(3)'s Legislative History, and Other AEDPA Provisions Confirm the Conclusion that Paragraph 6(3) States Three Prerequisites in the Past Tense.

This Court's interpretation of another AEDPA provision analogous to paragraph 6(3), the legislative history of paragraph 6(3), and the text of other AEDPA provisions confirm that paragraph 6(3) states three prerequisites in the past tense.

432; *Ashley*, 266 F.3d at 673-74; *United States v. Swinton*, 333 F.3d 481, 487 (3d Cir.), *cert. denied*, 540 U.S. 977 (2003).

"It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW, Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (quoting *Duncan*, 533 U.S. at 174). Federal courts have a "duty 'to give effect, if possible, to every clause and word of a statute.'" *Duncan*, 533 U.S. at 174 (quoting *United States v. Menasche,* 348 U.S. 528, 538-539 (1955)). This Court's interpretation of an AEDPA provision that is analogous to paragraph 6(3) confirms that by reading paragraph 6(3) to state three prerequisites in the past tense, this Court will "give effect to every clause and word" it states. *See Tyler v. Cain*, 533 U.S. 656 (2001) (interpreting 28 U.S.C. § 2244(b)(2)(A)).

Under 28 U.S.C. section 2244(b)(2), a federal court cannot consider a state prisoner's second or successive petition for habeas corpus relief unless that petition meets one of two exceptions. One of these two exceptions is found in section 2244(b)(2)(A).[3] Section 2244(b)(2)(A) requires, in pertinent part, that the petition contain a claim that relies on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." 28 U.S.C. § 2244(b)(2)(A).

In *Tyler*, this Court read section 2244(b)(2)(A) as establishing "*three prerequisites* to obtaining relief in a second or

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[3] Section 2244(b)(2)(A) provides:

> A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable;
>
> * * *

28 U.S.C. § 2244(b)(2)(A).

successive petition: First, the rule on which the claim relies must be a 'new rule' of constitutional law; second, the rule must have been 'made retroactive to cases on collateral review by the Supreme Court'; and third, the claim must have been 'previously unavailable.'" *Tyler*, 533 U.S. at 662 (emphasis added). Mr. Tyler could not establish the second of these requirements—that the new rule on which he relied had been made retroactive by this Court. *Id.* at 664-666. As a result, this Court held that he had not satisfied the statutory prerequisites in section 2244(b)(2)(A) and could not file a second or successive petition. *Id.* at 667-668.

Tyler confirms the conclusion that paragraph 6(3) has three distinct prerequisites to the running of the limitation period: first, that the right asserted "was initially recognized" by this Court; second, that the right "has been newly recognized" by this Court; and third, that the right has been "made retroactively applicable to cases on collateral review." § 2255 para. 6(3). Thus, like the petitioner in *Tyler*, section 2255 movants relying on paragraph 6(3) to reset the limitation clock must show that all *three* of its prerequisites are satisfied.

Comparing paragraph 6(3)'s "made retroactively applicable" language to the nearly identical language in section 2244(b)(2)(A) also confirms that this Court must follow Congress' use of the past tense in paragraph 6(3). As discussed above, section 2244(b)(2)(A) allows the filing of a second or successive habeas corpus petition if it contains a claim that relies on "a new rule of constitutional law, *made retroactive* to cases on collateral review by the Supreme Court." § 2244(b)(2)(A) (emphasis added). When this Court considered the "made retroactive" requirement of section 2244(b)(2)(A) in *Tyler*, it determined that Congress' use of the past tense was critical. Although Mr. Tyler asked the Court to consider the retroactivity of the right at issue in the first instance, this Court declined to do so, concluding that the "made retroactive" requirement was satisfied only if Mr.

Tyler could "show[] that this Court *already had made*" the right at issue retroactive. *Tyler*, 533 U.S. at 667 (emphasis added). Because Mr. Tyler could not make that showing, his second habeas petition had to be dismissed.

This Court should similarly respect Congress' choice of verb tense in paragraph 6(3) by reading its words "made retroactively applicable" in exactly the same way as the "made retroactive" language considered in *Tyler*. "A term appearing in several places in a statutory text is generally read the same way each time it appears." *See Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). The subtle distinction in language between paragraph 6(3) and section 2244(b)(2)(A) is one without a difference. *See Fischer v. United States*, 285 F.3d 596, 600 (7th Cir. 2002) (using language interchangeably); *Nichols v. United States*, 285 F.3d 445, 447 (6th Cir. 2002) (same). As a result, paragraph 6(3) does not reset the limitation clock unless a prisoner can show that a court "already had made" the right asserted retroactive to collateral cases. *See Tyler*, 533 U.S. at 668.

A proposed version of paragraph 6(3) provides an additional reason to respect Congress' use of the past tense in the present version. A predecessor proposal to the AEDPA, the Violent Crime Control and Law Enforcement Act of 1995, included an amendment to section 2255 that is structurally identical to the version ultimately enacted by the AEDPA. It created a limitation period for section 2255 motions that would have run from the latest of four dates, including "the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Court and *is made* retroactively applicable." S.3, 104th Cong. § 508 (1995) (emphasis added).[4] Congress' decision to

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[4] Under S.3, the one-year limitation would have run from "the latest of—"

(1) the date on which the judgment of conviction becomes final;

change the phrase "*is made* retroactively applicable" to "made retroactively applicable" in the present paragraph 6(3) demonstrates its intent to use the past tense.

Additional evidence of Congress' intent can be found in 28 U.S.C. § 2264, another provision of the AEDPA. In pertinent part, 28 U.S.C. § 2264 provides that for certain capital habeas corpus proceedings,

> the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—
>
> * * *
>
> (2) the result of the Supreme Court's recognition of a new Federal right that *is made retroactively applicable*;

28 U.S.C. § 2264(a)(2) (enacted by AEDPA § 107(a), 110 Stat. 1223 (1996)) (emphasis added).

"It is well settled that where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *Duncan*, 533 U.S. at 173 (quoting *Bates v. United States*, 522 U.S. 23, 29-30 (1997), and *Russello v. United States*, 464 U.S. 16, 23 (1983)). A comparison of the text of paragraph 6(3) with that of section 2264(a)(2) "supplies strong evidence" that, had Congress intended the phrase "made retroactively applicable" to mean "*is* made retroactively applicable," Congress would have mentioned the word "is" expressly. *Id.* at 172. But Congress did not do so.

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(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by each governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Court and *is made* retroactively applicable;

(4) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

S.3, 104th Cong. § 508 (1995) (emphasis added).

In sum, paragraph 6(3)'s plain language and legislative history, this Court's precedents, and other AEDPA provisions confirm that Congress intended that a prisoner relying upon paragraph 6(3) to reset the limitation clock must show that each of its three prerequisites has already been established.

C. The Minority View Eliminates Paragraph 6(3)'s Second Clause, And Changes Congress' Use of the Past Tense.

The minority view of paragraph 6(3), however, reads the statutory language differently. It interprets paragraph 6(3) to require the limitation period to run on "the date on which the right asserted was initially recognized by the Supreme Court . . . ." *See* JA 21; *Lopez*, 248 F.3d at 433; *Triestman*, 124 F.3d at 371 & n.13; *Nelson*, 184 F.3d at 954. This reading of paragraph 6(3) renders entirely unnecessary the second clause of the statute: "if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review." However, the duty of the federal courts "to 'give each word some operative effect' where possible, requires more in this context." *Duncan*, 533 U.S. at 175 (quoting *Walters v. Metropolitan Ed. Enterprises, Inc.*, 519 U.S. 202, 209 (1997)). It cannot be that Congress included these twenty words in the limitation provision applicable to section 2255 motions with the intent that they have no effect on the running of the limitation period.

Indeed, had this Court employed the minority's understanding of the rules of statutory construction in *Tyler*, the

result there would have been dramatically different. This Court would have concluded that the second and third clauses of section 2244(b)(2)(A) had no import and, accordingly, a petitioner could file a second or successive motion under section 2244(b)(2)(A) premised on a claim that relied only upon a "new rule of constitutional law," regardless of whether that rule was "made retroactive" or "previously unavailable." Of course, this Court said just the opposite.

The minority's interpretation of paragraph 6(3)'s start date not only renders superfluous the entire second clause of paragraph 6(3), but also changes Congress' choice of verb tense. *See, e.g, Lopez*, 248 F.3d at 430 (stating second and third requirements of paragraph 6(3) as "whether *Richardson creates* a 'newly recognized' right . . . that *is retroactive* on collateral review") (emphasis added); *Nelson*, 184 F.3d at 954 ("If the right *is* both newly recognized and *operates* retroactively . . . the statute of limitations for habeas corpus relief expires one year following the decision") (emphasis added). Indeed, the minority envisions a scenario in which a prisoner may file a section 2255 motion "as soon as" this Court announces the right upon which the motion is based "in the hope . . . that the district court *will find the right retroactively available* on collateral review." JA 27 (emphasis added). *See also* JA 25-26 (concluding paragraph 6(3) "provides a narrow exception which can be relied upon only when the new right recognized by the Supreme Court *can be retroactively applied* on collateral review"). This failure to respect Congress' use of the past tense cannot be reconciled with the language of the statute nor its legislative history.

Thus, the interpretation of paragraph 6(3) adopted by the minority of the circuits, and the court below, entirely rewrites the statutory language enacted by Congress. The minority has taken a 34-word provision that contains three prerequisites stated in the past tense, and turned it into a 14-word provision that contains but one requirement. This editing of

Congress' words cannot be reconciled with the language of the statute, its legislative history, or this Court's interpretation of the AEDPA.

II. INTERPRETING PARAGRAPH 6(3) TO RUN WHEN ITS THREE PREREQUISITES HAVE BEEN SATISFIED IS CONSISTENT WITH THE AEDPA'S PURPOSE AND THE STATUTORY SCHEME THE AEDPA CREATED.

In trying to ascertain the meaning of an Act of Congress it is important to "'consider not only the bare meaning' of the critical word[s] or phrase[s]" of the statute, "'but also its placement and purpose in the statutory scheme.'" *Holloway v. United States*, 526 U.S. 1, 6 (1999) (quoting *Bailey v. United States*, 516 U.S. 137, 145 (1995)). Interpreting paragraph 6(3) to begin to run only when its three requirements have been satisfied is consistent with the AEDPA's purpose and statutory scheme. It allows prisoners the opportunity to obtain relief on claims premised on important new decisions of this Court that apply retroactively to collateral cases, including such claims raised in second or successive motions. It also discourages frivolous filings.

A. The AEDPA Gives Prisoners Whose Cases are Well Past Finality the Opportunity to Obtain Relief on Claims Premised on Important New Decisions of This Court That Apply Retroactively.

One clear purpose of the AEDPA is respect for the finality of criminal judgments. *See Williams v. Taylor*, 529 U.S. 420, 436 (2000). Nonetheless, Congress enacted as part of the AEDPA a number of provisions that allow prisoners to obtain relief well past the date of finality. These provisions include the three circumstances stated in paragraph 6 of section 2255, which allow a prisoner to file a motion more than a year after the judgment of conviction has become final, *see* 28 U.S.C.

section 2255 paras. 6(2)-(4); and those allowing the filing of second or successive motions, *see* 28 U.S.C. section 2255 para. 8(1) & (2). Particularly pertinent here are the two instances where Congress extended the date of finality to allow federal prisoners the benefit of new decisions of this Court that have been held to apply retroactively to collateral cases. Paragraph 8(2) of section 2255 allows the filing of a second or successive motion premised on "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." § 2255 para. 8(2). And, paragraph 6(3) resets the beginning of the one-year limitation period to the date on which "the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized and made retroactively applicable to cases on collateral review." § 2255 para. 6(3).

Is it not surprising that Congress would extend the date of finality for new rights that apply retroactively to collateral cases. These few such rights are important. They arise from decisions that interpret a criminal statute in a way that narrows the scope of the statute's application, *see Bousley*, 523 U.S. at 620-21, as well as those that place "a class of private conduct beyond the power of the State to proscribe" or prohibit "'a certain category of punishment for a class of defendants because of their status or offense.'" *Graham*, 506 U.S. at 477 (quoting *Saffle*, 494 U.S. at 494). Retroactive effect is also given to decisions that supply "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Graham*, 506 U.S. at 478 (quoting *Saffle*, 494 U.S. at 495). This Court must therefore consider Congress' decision to allow prisoners the opportunity to adjudicate the merits of these important rights in interpreting paragraph 6(3).

B. Reading Paragraph 6(3) as Beginning to Run When All Three of its Requirements Have Been Satisfied Allows a Realistic Possibility of Relief on a Second or Successive Motion That is Premised on a New Rule of Constitutional Law.

Congress' decision to allow the opportunity to adjudicate the merits of rights important enough to be held retroactively applicable also illuminates the interaction of paragraphs 6(3) and 8(2). Like initial motions, second or successive motions must be filed within the one-year limitation period enacted by the AEDPA. *See, e.g., In re Vial*, 115 F.3d 1192, 1197 & n.9 (4th Cir. 1997); *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997); *Liriano v. United States*, 95 F.3d 119, 123 (2d Cir. 1996). Therefore, this Court's interpretation of paragraph 6(3) should honor Congress' decision in paragraph 8(2) to allow an opportunity for relief on a second or successive motion that asserts a new rule of constitutional law.

Paragraph 8(2) precludes the filing of a second or successive motion premised on a new rule of constitutional law unless "*this Court*," rather than a lower court, "*already had made*" that new rule retroactively applicable to collateral cases. *Tyler*, 533 U.S. at 667-668 (emphasis added) (discussing identical language in § 2244(b)(2)(A)). For this reason, this Court cannot make the retroactivity ruling required under paragraph 8(2) in a case involving a second or successive motion. *Id.* at 667-68. The only way in which this Court can make a new rule of constitutional law retroactive—thereby allowing the filing of a second or successive motion under paragraph 8(2)—is in a case where a prisoner's filing of an initial section 2255 motion ultimately results in this Court adjudicating the retroactivity issue. Thus, when this Court issues a decision involving a rule of constitutional law, Congress intended the lower courts to determine first—through an initial section 2255 motion—whether that decision is a new rule that applies retroactively.

If the one-year limitation period begins to run under paragraph 6(3) with this Court's initial decision, as the minority of circuits believe, the lower courts would have to resolve these complicated questions quickly enough to allow a case in the proper posture to reach this Court within a year of the initial decision. That is, within one year, the district court and court of appeals would have to adjudicate the retroactive application of this Court's initial decision, and this Court would have to grant *certiorari* and hold that the right applies retroactively. That would be the very rare case. *See Duncan*, 533 U.S. at 186 (Breyer, J., dissenting) (noting that nearly half of all prisoner petitions remain pending in the district court for six months or longer and 10% remain pending more than two years). More realistically, the limitation period will have run long before a case ever gets to this Court. And, although this Court eventually might hold the rule retroactive so that paragraph 8(2) would allow the filing of a second or successive motion, no prisoner could ever obtain relief in a successor posture because the statute of limitations in paragraph 6(3) would already have expired.

The minority's interpretation of paragraph 6(3) would, therefore, render paragraph 8(2) irrelevant. *See Tyler*, 533 U.S. at 677 (Breyer, J., dissenting) (noting that opportunity for relief in second or successive motion "will remain open only if the relevant statute of limitations is interpreted to permit its 1-year filing period to run from the time that this Court has 'made' a new rule retroactive, not from the time it initially recognized that new right"). There is no reason to believe that Congress would have gone to the trouble of enacting paragraph 8(2) if it understood that the operation of paragraph 6(3) would, for all practical purposes, make it impossible for a federal prisoner to file a second or successive motion premised on a new rule of constitutional law.

In contrast, starting the limitation period from the date on which all three prerequisites in paragraph 6(3) are met allows

for the possibility of second or successive motions premised on a new rule of constitutional law made retroactive by this Court. It allows the question of whether the rule at issue has been "initially recognized," "newly recognized" and "made retroactively applicable" to percolate in the lower courts before reaching this Court. Allowing this percolation would help clarify the retroactivity issue and better define the scope of the right announced in this Court's initial decision.

Moreover, under this reading of paragraph 6(3), the limitation period would not begin to run until a court of appeals[5] held the right at issue was both "new "and "retroactively applicable," and the one-year period would begin running only in that circuit. If the right at issue were one of constitutional law, such that a retroactivity ruling by this Court would trigger the ability to file a second or successive motion, this Court would presumably weigh that factor in determining whether to review the court of appeals' decision on certiorari. But certainly, this Court could review a retroactivity ruling by a court of appeals quickly enough to allow time for prisoners to file a second or successive motion premised on the retroactivity decision. *See, e.g., Schriro v. Summerlin*, ___ U.S.___, 124 S. Ct. 2519 (2004) (resolving question of whether *Ring v. Arizona*, 536 U.S. 584 (2002), applies retroactively to collateral cases nine months after ruling by court of appeals in *Summerlin v. Stewart*, 341 F.3d 1082 (2003) (*en banc*)). Thus, interpreting paragraph 6(3) to require a prisoner to show that all three of its prerequisites have been satisfied before the one-year period begins to run allows a realistic possibility of second or successive motions premised on a new rule of constitutional law. In contrast, the minority's interpretation offers no such possibility at all, and

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[5] The one-year period would not begin to run until the court of appeals made the retroactivity decision, because a district court decision does not bind the district court that issued it, much less other district courts. Only a decision of the court of appeals would do so.

therefore cannot be reconciled with Congress' enactment of paragraph 8(2).

C. Interpreting Paragraph 6(3) to Run When All Three of its Prerequisites Have Been Established Prevents the Unfairness that Results When The Right to Relief Depends Upon Where the Motion Happens to be Filed.

Paragraph 6(3) will most frequently come into play in the situation where a right is "initially recognized" in one case, and then recognized as a "new" right and "made retroactively applicable" in a later decision or decisions.[6] An example of this scenario is found in this Court's decisions in *Bailey* and *Bousley*. In *Bailey*, this Court defined the elements of an offense under 18 U.S.C. § 924(c)(1). *See Bailey*, 516 U.S. at 506. Three years later this Court held *Bailey* applied retroactively to collateral cases. *Bousley*, 523 U.S. at 620-21.

Concluding that paragraph 6(3)'s limitation period does not begin to run until all three of its requirements have been

[6] The reverse is also possible: a right may be determined to be new and made retroactively applicable before the substantive right is initially recognized. This situation arises because this Court in *Teague v. Lane*, 489 U.S. 288 (1989), opined that the question of whether a new rule applies retroactively to collateral cases must be addressed as a "threshold" matter *before* a court may consider the merits of the underlying substantive claim. 489 U.S. at 300-01. An example of this scenario is found in this Court's decisions in *Penry v. Lynaugh*, 492 U.S. 302 (1989), and *Atkins v. Virginia*, 536 U.S. 304 (2002). In *Penry*, this Court determined that were it to hold that the Eighth Amendment prohibits the execution of mentally retarded persons, it would be announcing a "new" rule that applied retroactively to collateral cases, but concluded the Eighth Amendment erected no such bar and denied relief. *Id.* at 329, 340. It was not until thirteen years later that the Court reversed its substantive ruling and declared that the Eighth Amendment barred the execution of the mentally retarded. *Atkins*, 536 U.S. at 321. Of course, this Court could also initially recognize a new right and make it retroactively applicable all in a single decision.

satisfied provides for the possibility that the lower courts may make an incorrect retroactivity determination. Under this reading of the statute, if this Court initially recognizes a right in Case A, the fact that a court of appeals may incorrectly rule that Case A does not apply retroactively to collateral cases will not affect the ability of prisoners to file timely motions under paragraph 6(3)—and the opportunity to obtain section 2255 relief—if the right is later found to do so. Because the running of the limitation period is linked to all three prerequisites in the statute, in those circuits that hold that Case A does not apply retroactively, the one-year filing period would not begin to run under paragraph 6(3) unless and until this Court ultimately decides in Case B that Case A applies retroactively. Although the fact that a court of appeals made an incorrect retroactivity determination may delay the ability to obtain relief under Case A, it does not preclude all possibility of relief.

The minority view of paragraph 6(3), however, enshrines a retroactivity decision by a court of appeals even though this Court later deems that decision to be incorrect. Under the minority view, prisoners seeking the benefit of the decision in Case A must file their motions within a year of that decision or lose all opportunity for relief. For those motions that are filed within a year of Case A, the lower courts will have to consider whether they can grant relief. Wrapped up in that merits determination is the issue of whether Case A states a new rule that applies retroactively to collateral cases. If a court of appeals eventually determines that the right established in Case A does not apply retroactively, and this Court, for whatever reason, denies certiorari, the court of appeals' denial of relief on the merits would become final. The district courts in that circuit would rely on the appellate court's decision to summarily deny motions raising claims under Case A, thereby quickly disposing of the majority of them.

But suppose not long thereafter, this Court grants certiorari in Case B to determine whether Case A applies retroactively to collateral cases, and concludes that it does. In those circuits where the court of appeals has already made an incorrect retroactivity determination, Case B offers no relief. More than one year will surely have run from the decision in Case A, and this Court's decision in Case B will not have triggered a new limitation period. Accordingly, no motion filed after Case B would be timely. In the end, prisoners in those circuits that reached the correct retroactivity decision would have the ability to obtain relief based on the right announced in Case A, whereas prisoners in those circuits who reached the wrong retroactivity decision would not. In other words, in some circuits this Court's decision in case B would not be the supreme law of the land. This cannot be the result Congress intended in enacting paragraph 6(3).

D. Requiring the One-Year Period to Run from the Date On Which All Three Requirements in Paragraph 6(3) Are Satisfied Discourages the Filing of Frivolous Motions.

Finally, requiring the one-year period of limitation to run from the date all three requirements in paragraph 6(3) are satisfied comports with the purpose of the AEDPA to curb frivolous applications for collateral relief. *See, e.g., Martin v. Bissonette*, 118 F.3d 871, 874 (1st Cir. 1997). It allows federal prisoners the opportunity to make an informed decision about whether to file a section 2255 motion premised upon a recent ruling by this Court, because once all three requirements are established, it will be clear that ruling provides a possibility of relief. In this way, prisoners may wait until it is possible to evaluate the likelihood of a motion's success on the merits, without the concern that by doing so, they risk all opportunity for relief because the statute of limitations may have run.

In sharp contrast, reading paragraph 6(3) to begin to run "on the date on which the right asserted was initially recognized" by this Court encourages federal prisoners to file potentially frivolous section 2255 motions every time this Court issues a decision, whether or not that decision involves a "newly recognized right," and even though that right may never be applied retroactively and, therefore, may never offer the opportunity for relief. For example, this Court's decision in *Blakely v. Washington*, 124 S. Ct. 2531 (2004), has been described as potentially affecting thousands of federal prisoners. *Id.* at 2549 & n.2 (O'Connor, J., dissenting). This Court's recent decision in *United States v. Booker*, ___ U.S. ___, 2005 WL 50108 (U.S. Jan. 12, 2005), raises similar concerns. If the one-year limitation period begins to run on the date this Court decided *Blakely* and *Booker*, large numbers of federal prisoners will feel compelled to file section 2255 motions within a year of those decisions rather than risk losing the opportunity to obtain any relief they may provide. And these prisoners will feel compelled to file even though it is not clear whether either *Blakely* or *Booker* involve a "newly recognized right," or whether either of these decisions will ever be made retroactively applicable to cases on collateral review.

E. Paragraph 6(3)'s Placement and Purpose in the AEDPA Compel the Conclusion that All Three of Its Prerequisites Must be Satisfied Before the Limitation Period Begins to Run.

Interpreting paragraph 6(3) as beginning to run when its three prerequisites have been satisfied is consistent with the AEDPA's purpose and the statutory scheme the AEDPA enacted. This interpretation advances Congress' intent to give federal prisoners the ability to obtain section 2255 relief on a claim premised on a new decision of this Court that has been held to apply retroactively to collateral cases, even if the claim arose years after finality. It allows for the possibility of

second or successive motions premised on a new rule of constitutional law under paragraph 8(2) of section 2255, and ensures that the opportunity to obtain relief based on a new right held retroactive is not dependent on the jurisdiction in which the motion is filed. This interpretation also discourages the filing of frivolous motions.

In contrast, the minority view vitiates Congress' intent to provide an avenue for federal prisoners to adjudicate those few important rights that apply retroactively to collateral cases, and encourages the filing of frivolous motions. It fails to accord with paragraph 6(3)'s placement and purpose in the AEDPA, and this Court should reject it.

III. MR. DODD'S MOTION WAS TIMELY FILED.

Interpreting paragraph 6(3) to state that the limitation period begins to run when all three of its requirements have been satisfied accords with the plain language of the statute, as well as its placement and purpose in the statutory scheme enacted by the AEDPA. For Mr. Dodd, all three of paragraph 6(3)'s prerequisites were not satisfied until the Eleventh Circuit's decision in *Ross* concluded that *Richardson* initially recognized a new right that applied retroactively to collateral cases. Mr. Dodd's motion was timely, and this Court should reverse the decision of the court of appeals to the contrary.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision of the court of appeals.

Respectfully submitted,

KATHLEEN M. WILLIAMS
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